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**IN THE
COURT OF APPEALS OF INDIANA**

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Salvador Vasquez, Judge
Cause No. 45G01-0711-CM-7

KIRSCH, Judge

Following a jury trial, Ronald J. Doeing was convicted of two counts of disorderly conduct,¹ each as a Class B misdemeanor, one count of resisting law enforcement² as a Class A misdemeanor, and one count of intimidation³ as a Class D felony. He appeals, raising the following restated issue: whether the trial court abused its discretion when it admitted evidence that Doeing had a handgun in his possession at the time of his arrest.

We affirm.

FACTS AND PROCEDURAL HISTORY

On October 2, 2007, Officer Jesse Vargas of the Lake County Sheriff's Department was on patrol working traffic enforcement and was traveling southbound on Taft Street near Beaver's Bar in Merrillville, Indiana. As he approached the intersection with U.S. Route 30, he observed a vehicle traveling northbound in excess of the forty-five mile-per-hour speed limit. Officer Vargas initiated a traffic stop on this vehicle, and the driver pulled into the parking lot of Beaver's Bar and parked near the front door. Because Officer Vargas believed that the driver could be intoxicated, he had the driver exit his vehicle and began explaining and demonstrating field sobriety tests to him.

Officer Sam Orlich and his passenger, Officer Shellhart, observed the traffic stop and pulled into the parking lot next to Officer Vargas's patrol car to assist. At this point, some patrons of the bar had come outside and were yelling profanities at and heckling the police.

¹ See Ind. Code § 35-45-1-3.

² See Ind. Code § 35-44-3-3.

³ See Ind. Code § 35-45-2-1.

Officer Orlich told them to be quiet and to stop using the profanities. He and Officer Shellhart entered the bar to keep the customers under control.

While Officer Vargas was continuing to explain the field sobriety tests to the driver he had stopped, he heard someone yell, “What the f**k are you looking at?” from the area to his left. *Tr.* at 47. Officer Vargas looked in the direction of the voice and observed an individual later identified as Doeing standing by a car. The officer asked him, “Are you talking to me,” to which Doeing replied, “You heard me, I said what the f**k are you looking at.” *Id.* Doeing and Officer Vargas began walking toward each other, and the officer asked Doeing if there was a problem. Doeing responded, “You’re going to f**king find out if I have a problem here in a minute.” *Id.* at 48. Officer Vargas told Doeing that if he kept using profanity toward the officer, he would be arrested for disorderly conduct. Doeing continued to use profanity, and Officer Vargas repeated the warning.

As Doeing walked toward the officer, he had his right hand behind his back. Officer Vargas ordered Doeing three times to remove his hand from behind his back and show his hands, but Doeing failed to do so, which caused Officer Vargas concern for his safety. When Doeing and Officer Vargas reached each other, Doeing still had his hand behind his back. Officer Vargas grabbed Doeing’s right arm, a struggle ensued, but the officer was able to handcuff Doeing’s right wrist. Officer Vargas was also able to gain control of Doeing’s left arm and walk him to the front of Officer Orlich’s patrol car. Doeing continued to struggle and to curse and threaten to “get” Officer Vargas despite the officer’s commands to stop. *Id.* at 51. As Officer Vargas attempted to handcuff Doeing, Officer Orlich exited the bar and

assisted in finally handcuffing Doeing, while Doeing continued to curse and threaten the officers. *Id.* at 53, 110-11.

When Officer Vargas was handcuffing Doeing, he felt a bulge in the area of Doeing's left back pocket. During a patdown search incident to Doeing's arrest, the officers found a loaded .357 Magnum handgun on a holster in Doeing's left back pocket, which had been covered by his shirt. While Officer Vargas secured the handgun, which Doeing had a valid license to carry, Doeing continued to curse and threaten the officers. The officers attempted to put Doeing into the rear seat of Officer Orlich's patrol car, but Doeing resisted, saying, "Take these cuffs off, you f**king a**hole. You'll see how bad I am." *Id.* at 65-66. As Officer Vargas tried to get Doeing's feet into the car, Doeing attempted to kick the officer in the face. During the continued struggle, Doeing told the officers that when he got out of jail, he was going to come and get them. *Id.* at 70.

The officers were finally able to place Doeing in the car, but he began kicking the door and window and had to be pepper sprayed to be subdued. Officer Orlich and Officer Shellhart then transported Doeing to the jail. During the trip, Doeing asked Officer Orlich if he was going to get his gun back, and the officer told Doeing that because he was under arrest, he would have to go through legal means to get it back. *Id.* at 127-28. Doeing kept saying, "One night when I get out of here, I'm going to get that gun back." *Id.* at 128.

The State charged Doeing with public intoxication, two counts of disorderly conduct, resisting law enforcement, and intimidation. A jury trial was held on April 7-8, 2008, and Doeing objected to any evidence concerning the handgun being admitted. The trial court

admitted the evidence over the objection. At the conclusion of the trial, Doeing was found guilty of two counts of disorderly conduct, each as a Class B misdemeanor, resisting law enforcement as a Class A misdemeanor, and intimidation as a Class D felony. The trial court sentenced him to an aggregate sentence of thirty-eight months. Doeing now appeals.

DISCUSSION AND DECISION

Doeing argues that the trial court abused its discretion when it admitted evidence of the handgun found in his possession when he was arrested. He contends that the evidence was not relevant to any of his criminal charges and, alternatively, any probative value was substantially outweighed by its prejudicial impact. We review a trial court's decision to admit or exclude evidence for an abuse of discretion. *Southern v. State*, 878 N.E.2d 315, 321 (Ind. Ct. App. 2007), *trans. denied* (2008). An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. *Id.* All relevant evidence is admissible. Ind. Evidence Rule 401. Relevant evidence is evidence having a tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. *Pittman v. State*, 885 N.E.2d 1246, 1255-56 (Ind. 2008). However, relevant evidence may be excluded if the probative value of the evidence is substantially outweighed by the danger of unfair prejudice. *Id.* at 1256 (citing Evid. R. 403).

In order for the State to prove the crime of intimidation as a Class D felony, it was required to prove that Doeing communicated a threat to law enforcement officers with the intent that the officers be placed in fear of retaliation for the prior lawful act of placing

Doeing into custody. Ind. Code § 35-45-2-1; *Appellant's App.* at 38. Here, when the confrontation between Doeing and Officer Vargas began, Doeing was cursing and yelling at the officer and started to walk toward him with his right hand behind his back. Although Officer Vargas told Doeing three separate times to remove his hand from behind his back, Doeing refused. When Officer Vargas attempted to handcuff Doeing, a struggle ensued, and Doeing cursed at and threatened to “get” Officer Vargas. *Tr.* at 51. In the continued struggle to handcuff Doeing, in which Officer Orlich joined, Doeing repeatedly cursed at and threatened the officers, again stating that he was “going to get you guys.” *Id.* at 111. After the officers were able to handcuff Doeing and discovered the handgun in Doeing’s left, back pocket during a patdown search incident to his arrest, Doeing continued to make verbal threats to the officers and told them that he was going to come get them when he got out of jail. *Id.* at 70.

The admission of the evidence that Doeing possessed a handgun was relevant as to whether he communicated his threats to the officers with the intent that they be placed in fear of retaliation for arresting him and placed his threats in the context of his intent. Doeing’s possession of a handgun made his ability to carry out his threats to get the officers more viable. Likewise, the probative value of this evidence was not substantially outweighed by the danger of unfair prejudice because this evidence was highly probative of Doeing’s intent. We conclude that the trial court did not abuse its discretion when it admitted the evidence regarding the handgun found in Doeing’s possession when he was arrested. Affirmed.

BAKER, C.J., and NAJAM, J., concur.